OSM MARKETING (KK) SDN BHD v. THE COLLECTOR OF STAMP DUTIES, MALAYSIA

HIGH COURT SABAH & SARAWAK, KOTA KINABALU
FARIDZ GOHIM ABDULLAH JC
[CIVIL APPEAL NO: BKI-25-7-4-2023]
25 OCTOBER 2023

Abstract – *In interpreting a provision of a taxing statute, the intention of Parliament ought to be considered. Therefore, in a situation where the taxing statute or Parliament are silent on whether any amendment to any of the provisions of the taxing statute can be applied retrospectively, the court should refrain from making an interpretation that the amendment to the provisions can be applied retrospectively.*

ADMINISTRATIVE LAW: *Judicial review – Certiorari – Application for – Seeking to quash decision of Collector of Stamp Duties ('Collector') to dismiss application for refund of stamp duty paid – Refund application dismissed by Collector because of non-compliance with 12-month time limitation period prescribed under s. 57(f)(i)(a) of Stamp Act 1949 – Whether decision of Collector tainted with illegality, irregularity and/or procedural impropriety – Whether amendment to s. 57(f)(i)(a) of Stamp Act 1949 ought to apply prospectively or retrospectively – Stamp Act 1949, s. 57(f)(i)(a) – Finance Act 2021, ss. 36 & 40*

REVENUE LAW: *Stamp duty – Refund – Application for – Seeking for refund of stamp duty paid due to spoiled stamp – Refund application rejected by Collector of Stamp Duties ('Collector') because of non-compliance with 12-month time limitation period prescribed under s. 57(f)(i)(a) of Stamp Act 1949 – Whether decision of Collector tainted with illegality, irregularity and/or procedural impropriety – Whether amendment to s. 57(f)(i)(a) of Stamp Act 1949 ought to apply prospectively or retrospectively – Stamp Act 1949, s. 57(f)(i)(a) – Finance Act 2021, ss. 36 & 40*

The applicant was the company OSM Marketing (KK) Sdn Bhd, while the respondent was the Collector of Stamp Duties. On 21 May 2021, the applicant entered into a sale and purchase agreement ('SPA') with another company named Yu Chan Trading Sdn Bhd ('Yu Chan'). The memorandum of transfer ('MOT') in respect of the said SPA was executed on 28 May 2021. The payment of duty *ad valorem* and the issuance of the stamp certificate, in the amount of RM78,400 ('stamp duty'), was made and issued to the applicant on 5 August 2021. On 14 December 2022, after a winding-up search was conducted upon Yu Chan, it was discovered that the same had wound up since 18 March 2021. This prompted the applicant, on 6 February 2023, to apply to the respondent under s. 57(f)(i) of the Stamp Act 1949 ('Stamp Act') for a refund of the stamp duty paid ('refund application') due

to spoiled stamp. However, the refund application was rejected on the grounds that it did not fall within the matters enumerated under ss. 21(7), 57, 58 and/or 80(3) of the Stamp Act ('respondent's decision'). The respondent also contended that, since the refund application was not submitted within 12 months after the date the stamp became spoiled, *ie*, the date when the MOT was executed, 28 May 2021, the prescribed time limit under s. 57(f)(i)(a) of the Stamp Act had not been complied with by the applicant. Aggrieved, the applicant filed an application for judicial review for order of *certiorari* to quash the respondent's decision ('judicial review application'). In support, the applicant primarily submitted that, effectively, since 1 January 2021, pursuant to ss. 36 and 40 of the Finance Act 2021 ('Finance Act'), proviso (a) to s. 57(f)(i) of the Stamp Act had been amended where the period of 12 months had been substituted with 24 months ('amendment'). Therefore, the filing of the refund application had not contravened the prescribed time limit under s. 57(f)(i)(a) of the Stamp Act. The main issue that arose was whether the said amendment ought to be given prospective or retrospective effect.

Held (dismissing judicial review application):

(1) The respondent's decision was not tainted with illegality, irrationality and/or procedural impropriety. When the refund application was decided, regards had been given by the respondent to the powers and authorities conferred upon it under the Stamp Act. From the respondent's letter to the applicant ('respondent's letter'), the respondent had clearly informed the applicant that its decision was based on the non-fulfilment of the conditions as enumerated under ss. 21(7), 57, 58 and 80(3) of the Stamp Act. In addition, there was also no evidence adduced by the applicant that showed the decision-making process undertaken by the respondent in arriving at its decision was illegal, irrational and/or procedurally improper. (paras 52, 54 & 57)

(2) It was not expressly stated under the Finance Act or Stamp Act that the amendment shall commence retrospectively. Section 36 of the Finance Act clearly prescribed that the date of the commencement was on 1 January 2021, which proved that the commencement of the Act was prospective in nature. Although the refund application was filed after the date of coming into force of the amendment, the refund application does not meet the strict requirement of s. 57 of the Stamp Act regarding the time limit of 12 months as the refund application fell under the pre-amended proviso (a) to s. 57(f)(i) of the Stamp Act. As mentioned in the respondent's letter, the respondent had rightly exercised his statutory power under the pre-amended proviso (a) to s. 57(f)(i) of the Stamp Act. Considering that (i) the refund application was clearly time-barred and the amendment to proviso (a) to s. 57(f)(i) of the Stamp Act

was prospective in nature; (ii) there was nothing mentioned in the Hansard that the Parliament had agreed that the amendment would be applied retrospectively; and (iii) there was no saving or transitional clause in the amending statute (Finance Act) that could be relied on by the applicant, the judicial review application was without merit. The same was therefore dismissed with costs. (paras 62-67)

Case(s) referred to:

Bauer (Malaysia) Sdn Bhd v. Jack-In Pile (M) Sdn Bhd & Another Appeal [2018] 10 CLJ 293 CA ***(refd)***

Council Of Civil Service Unions v. Minister For The Civil Service [1985] AC 374 ***(refd)***

Ireka Engineering & Construction Sdn Bhd v. PWC Corporation Sdn Bhd & Other Appeals [2020] 1 CLJ 193 FC ***(refd)***

Ketua Pengarah Hasil Dalam Negeri v. Alcatel-Lucent Malaysia Sdn Bhd & Anor [2017] 2 CLJ 1 FC ***(refd)***

Malaysian Oxygen Bhd v. Soh Tong Wah & Another Appeal [2015] 1 CLJ 191 CA ***(refd)***

Mangin v. Inland Revenue Commissioner [1971] AC 739 ***(foll)***

Michael Lee Fook Wah v. Menteri Sumber Tenaga Manusia, Malaysia & Anor [1998] 1 CLJ 227 CA ***(refd)***

Minister Of Home Affairs, Malaysia v. Persatuan Aliran Kesedaran Negara [1990] 1 CLJ 699; [1990] 1 CLJ (Rep) 186 SC ***(refd)***

Mohan Singh v. Attorney General [1987] 1 SLR 398 ***(refd)***

Palm Oil Research And Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd [2004] 2 CLJ 265 FC ***(refd)***

Peguam Negara Malaysia v. Chin Chee Kow & Another Appeal [2019] 4 CLJ 561 FC ***(refd)***

R v. Panel On Take-Overs And Mergers, Ex Parte Datafin Plc [1987] QB 815 ***(refd)***

Ta Wu Realty Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri & Anor [2008] 6 CLJ 235 CA ***(refd)***

Tan Kim Keow v. Pemungut Duti Setem Malaysia [2020] CLJU 93; [2020] 1 LNS 93 HC ***(refd)***

UMW Equipment Sdn Bhd v. Parantaman Ramasamy & Anor [2014] 3 ILR 12 CA ***(refd)***

Yew Bon Tew & Anor v. Kenderaan Bas MARA [1983] 1 CLJ 11; [1983] CLJ (Rep) 56 PC ***(refd)***

Legislation referred to:

Finance Act 2021, ss. 36, 40

Rules of Court 2012, O. 53 r. 3(2)

Stamp Act 1949, ss. 21(7), 57(f)(i), (vi)(a), 58, 80(3)

For the applicant - Timothy Ho; M/s Vincent Wong & Co

For the respondent - Mohammad Hafidz Ahmad & Mohd Kamarulzaman Mohamed Noor; LHDN, Kota Kinabalu

Reported by Syamim Ariffin

A

JUDGMENT

Faridz Gohim Abdullah JC:

Introduction

[1] The applicant, OSM Marketing (KK) Sdn Bhd, filed an application for
B leave for judicial review (encl. 1) and leave was granted by the court on 10 July 2023.

[2] The applicant's substantive application sought for the relief as follows:

(i) an order for *certiorari* to quash the decision of the Collector of Stamp
C Duties, Malaysia, the respondent abovenamed, dated 9 February 2023, to reject the applicant's application for allowance of spoiled stamps pursuant to s. 57(f)(i) of the Stamp Act 1949 (Revised 1989) (Act 378) for a refund of the stamp duty paid by the applicant in the sum of RM78,400 in Adjudication No. H01BD8122DXS030 (the "application");

D (ii) an order that the respondent shall refund the stamp duty in the sum of RM78,400 pursuant to the application of the applicant within 14 days from the date of order of this court; and

(iii) costs.

E **[3]** The application is supported by an affidavit in support of Yong Farn filed on 28 April 2023 (encl. 2) and the statement of the applicant under O. 53 r. 3(2) of the Rules of Court 2012 (encl. 5) dated 12 June 2023.

[4] The respondent filed their affidavit in reply to the affidavit in support of Yong Farn.

F

[5] The applicant then filed in their affidavit in reply to the respondent's affidavit as in encl. 16.

[6] On 25 October 2023, I had delivered my brief ruling whereby I dismissed the applicant's application for judicial review. Dissatisfied with
G the said ruling, the applicant filed an appeal to the Court of Appeal on 31 October 2023.

[7] The following are the grounds of my decision in dismissing the applicant's judicial review application.

H

Background Of Facts

[8] On 21 May 2021, the applicant entered into a sale and purchase agreement (S&P) with a company named Yu Chan Trading Sdn Bhd.

[9] The applicant then executed a memorandum of transfer on 28 May 2021.

I

[10] Payment of duty *ad valorem* has been made by the applicant and a stamp certificate in the sum of RM78,400 was issued by the respondent on 5 August 2021.

[11] The applicant later conducted a winding-up search dated 14 December 2022 on Yu Chan Trading Sdn Bhd wherein the same was found to have been wound-up on 18 March 2021.

[12] The applicant later submits his application to the respondent under s. 57(f)(i) of the Stamp Act 1949 on 6 February 2023 for the return of stamp duty paid to the respondent even though the applicant knew that it was already out of time.

[13] However, the applicant's application was rejected by the respondent on the grounds that it did not fall within the matters set out in ss. 21(7), 57, 58 and/or 80(3) of the Stamp Act 1949.

[14] Section 57(f)(i) of the Stamp Act 1949 states that "allowance shall be made by the Collector for stamps spoiled if the stamp used for an instrument executed by any party thereto, but afterwards found to be absolutely void from the beginning". However, the proviso (a) to s. 57 clearly put a limitation or condition that provided the application be made "within 12 months after the stamp has been spoiled or become useless or in the case of an executed instrument after the date of the instrument …".

[15] By virtue of ss. 40 and 36 of the Finance Act 2021, the proviso (a) of s. 57 of the Stamp Act 1949 was amended and the period of 12 months was substituted with 24 months with effect from 1 January 2022.

Duty Of The Court In A Judicial Review Application

[16] As rightly pointed out by the counsel for the respondent, it is a trite law that judicial review is a court proceeding to challenge the legality of the decision-making process by a public authority. Further, the court sitting in a judicial review application is exercising its supervisory jurisdiction and is not to examine the merits of the application. In the case of *Ketua Pengarah Hasil Dalam Negeri v. Alcatel-Lucent Malaysia Sdn Bhd & Anor* [2017] 2 CLJ 1; [2017] 1 MLJ 563, Suriyadi FCJ held:

> [69] A Judicial review is a court proceeding where a challenge is made on the decision of the relevant authority or entity ('the appellant') *ie*, by challenging the lawfulness of the decision making process. This is trite law. Generally, the Court dealing with the judicial review application in a supervisory capacity is not to delve into the merit of the case. In other words the evidence is not reassessed. The Court is merely to quash the decision of the relevant authority, if need be, and not to substitute with what it thinks is the correct decision. We are not here to usurp the powers of the designated authority.
>
> [70] Lord Brightman in *Chief Constable of North Wales Police v. Evans* (1982) 1 WLR 1155 at page 1174 had occasion to state that a judicial review *"is not an appeal from the decision but a review of the manner in which a decision is made."* The Book authored by Mr Michael Supperstone QC and Mr James Goudie QC in *Judicial Review* at p 72, was also referred and reads:

> It is easy to understand why this is so. The paradigm case of Judicial Review challenge arises where a body whose functions are conferred by statute are said to have acted in a manner in which the law does not allow. But if the only complaint is that the body has reached a decision unfavourable to the Applicant on the facts, and the claim is put forward is a plea to the Court in effect to substitute a different decision, the proceedings would amount to an invitation to the Court to exercise the very function which statute had confided to the body reviewed; to accede to such an invitation would be to usurp the will of Parliament. Since of course, the Parliament includes the elected element of the legislature, any such stance by the Court might reasonably be castigated as undemocratic ... (emphasis added)

[17] A court hearing a judicial review application acts in a supervisory capacity. The court does not perform appellate functions in reviewing the findings of an inferior tribunal, governmental authority or any other entity discharging a public function. In exercising its supervisory jurisdiction, the courts are required to confine its enquiry to whether any errors of law had been committed, disproportionate measures imposed or whether there were many flaws in procedure in the impugned process (*Chapter 3 The Supervisory Jurisdiction of the Court in General: The Law and Practice of Judicial Review in Malaysia* by Gregory Das).

[18] In the case of *Mohan Singh v. Attorney General* [1987] 1 SLR 398, the High Court of Singapore held that:

> The scope of judicial review does not extend to this Court purporting to act in an appellate capacity and assessing the sufficiency evidence before the Minister of Home Affairs. He had acted within his jurisdiction and it is plainly not for this court to substitute its view on what should be the effect of the evidence before him …

[19] In *R v. Panel On Take-Over And Mergers, Ex Parte Datafin Plc* [1987] QB 815, the English Court of Appeal observed that "an application for judicial review is not an appeal. The panel and not the court is the body charged with the duty of evaluating the evidence and finding the facts. The role of the court is wholly different. It is, in an appropriate case, to review the decision of the panel and to consider whether there has been 'illegality', … 'irrationality', … or 'procedural impropriety".

[20] The supervisory jurisdiction in judicial review proceedings is distinct from the exercise of appellate powers by the courts. It is not to be treated as an invitation for a review of the findings of fact of a public authority. (See *Malaysian Oxygen Bhd v. Soh Tong Wah & Another Appeal* [2015] 1 CLJ 191); (*UMW Equipment Sdn Bhd v. Parantaman Ramasamy & Anor* [2014] 3 ILR 12).

[21] A principle characteristic of the supervisory jurisdiction is the preclusion of a merits review of a decision. The court, in hearing a judicial review application, is exercising its supervisory jurisdiction and not to examine the merits of the application and not to substitute its view for that of the decision-maker. (See *Alcatel-Lucent* case).

> [69] *A Judicial review is a court proceeding where a challenge is made on the decision of the relevant authority or entity ('the appellant') ie, by challenging the lawfulness of the decision making process.* This is trite law. *Generally, the Court dealing with the judicial review application in a supervisory capacity is not to delve into the merit of the case.* In other words the evidence is not reassessed. The Court is merely to quash the decision of the relevant authority, if need be, and not to substitute with what it thinks is the correct decision. We are not here to usurp the powers of the designated authority. (emphasis added)

[22] The exercise of the supervisory jurisdiction in a judicial review also means that the focus of the enquiry is the process by which a decision had been made and not the decision in itself. In the case of *Michael Lee Fook Wah v. Menteri Sumber Tenaga Manusia, Malaysia & Anor* [1998] 1 CLJ 227 per Shaik Daud Ismail JCA held:

> [1] In hearing an application for an order of *certiorari*, the High Court sits not in its appellate jurisdiction but in its supervisory jurisdiction. The court is, thus, concerned with the decision-making process and not with the decision itself. It should not readily question the administrative decision of a Minister as that is his absolute discretion. The courts will interfere only if the Minister has acted *ultra vires*, unfairly or unjustly in the exercise of his discretion.

[23] There are four recognised grounds to challenge a decision of a public authority by way of a judicial review. The grounds were established by the House of Lords in the seminal decision of *Council Of Civil Service Unions v. Minister For The Civil Service* [1985] AC 374 ("*CCSU*").

[24] The Supreme Court in the case of *Minister Of Home Affairs, Malaysia v. Persatuan Aliran Kesedaran Negara* [1990] 1 CLJ 699; [1990] 1 CLJ (Rep) 186 identified three main grounds from the *CCSU*'s case as follows:

> Applying the principles enunciated by Lord Diplock in *Council of Civil Service Unions v. Minister of Civil Service*, there are 3 grounds upon which administrative action is subject to judicial review. They are:
>
> (i) "illegality" – the decision maker must understand correctly the law that regulates his discretion making power and must give effect to it;
>
> (ii) "irrationality" – decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it;

A (iii) "procedural impropriety" – rather than failure to observe basic rules of natural justice or failure to act with procedural unfairness towards the person who will be effected by the decision this is because susceptibility to judicial review under this head covers also failure by the administrative tribunal to observe procedural rules expressly laid down in the legislative instrument by which its jurisdiction is
B conferred even where the failure does not involve any denial of natural justice.

(see also *Peguam Negara Malaysia v. Chin Chee Kow & Another Appeal* [2019] 4 CLJ 561).

C **Issue Before The Court**

[25] The main issue raised by the applicant's solicitor was in respect of the amendment to the proviso (a) to s. 57 of the Stamp Act 1949 whether it should be given a retrospective or prospective effect.

D **Amendment To Stamp Act 1949**

[26] By virtue of s. 40 of the Finance Act 2021 (Act 833), the Stamp Act 1949 was amended as follows:

> Amendments To The Stamp Act 1949
>
> Commencement of amendments to the Stamp Act 1949
>
> E 36. This Chapter comes into operation on **1 January 2022.**
>
> 40. Paragraph (a) of the proviso to section 57 of the principal Act is amended by substituting for the words "twelve months" wherever appearing the words "twenty-four months". (emphasis added)

F **Effect Of The Amendment**

[27] Prior to the said amendment, the period prescribed under para. (a) of the proviso to s. 57 of the Stamp Act 1949 was 12 months.

[28] Consequent to the above amendment, the period under proviso (a) was
G amended and extended to 24 months.

Commencement Date Of The Amendment

[29] Section 40 of the Finance Act 2021 (Act 833) that amends proviso (a) to s. 57 of the Stamp Act was gazetted on 31 December 2021 and the date
H for coming into operation of the amendment was fixed on 1 January 2022 by virtue of s. 36 of the Finance Act 2021.

[30] The said commencement date is provided in Chapter IV, s. 36 of the Finance Act 2021, which is reproduced as follow:

I

Commencement of amendments to the Stamp Act 1949

36. This Chapter comes into operation on 1 January 2022

Applicant's Contention

[31] The applicant concedes that at the time of filing of the application, the applicant was already out of time as it was beyond 12 months' time limit. However, the applicant contended that the said amendment of s. 57 proviso (a) should be given a retrospective effect as it is procedural in nature and does not affect any substantive rights of any other person. In such case, the applicant's application would certainly be within time. Thus, the respondent shall refund the stamp duty in the sum of RM78,400 pursuant to the application of the applicant.

Respondent's Contention

[32] The respondent's counsel contended that the decision of the respondent was made based on the principles enunciated by the relevant law and as such, the decisions are correctly made. The application of proviso (a) to s. 57 of the Stamp Act 1949 in which 12 months' time limit should be applied in the applicant's case as the applicant's memorandum of transfer was dated 28 May 2021.

[33] The respondent further contended that s. 40 of the Finance Act 2021 only came into force on 1 January 2022, which took place after the applicant's execution of its memorandum of transfer (MOT).

[34] The respondent also contended that being a taxing statute, the said amendment possesses prospective effect in which the applicant shall not be entitled to enjoy the benefits of the amendment to proviso (a) to s. 57 of the Stamp Act 1949.

Decision Of The Respondent

[35] The decision of the respondent dated 9 February 2023 in rejecting the applicant's application can be found in the applicant's affidavit in support (encl. 2) marked as exh. "F". I quote the said decision as follows:

Tuan,

Bayaran Balik Duti Setem

Jenis Surat Cara: Memorandum of Transfer

Saya dengan hormatnya merujuk kepada permohonan tuan bertarikh 06/02/2023.

2. Dukacita dimaklumkan permohonan tuan tidak diluluskan kerana:

Dokumen dan alasan yang dikemukakan tidak memenuhi syarat-syarat atau tidak termasuk dalam mana-mana hal keadaan sebagaimana yang ditetapkan dibawah Seksyen 21(7), 57, 58 dan 80(3) Akta Setem 1949.

A **Finding Of Facts**

[36] Based on the affidavit evidence and the documentary evidence adduced before this court, I found the following facts were established:

(i) the memorandum of transfer (MOT) is an instrument within the meaning
B of the Stamp Act 1949.

(ii) the said MOT was executed on 28 May 2021 in respect of the sale and purchase of property with a company named Yu Chan Trading Sdn Bhd.

(iii) a stamp duty in the amount of RM78,400 was paid to the respondent on
C 5 August 2021.

(iv) a winding up search on the company, Yu Chan Trading Sdn Bhd, dated 14 December 2022 on Yu Chan Trading Sdn Bhd wherein the same was found to have been wound-up on 28 June 2022 *ie*, before the date the MOT was executed.

D (v) the applicant filed in their application for the refund of stamp duty *via* the stamps assessment and payment system on 6 February 2023.

(vi) the respondent made a decision to reject the applicant's application on 9 February 2023.

E (vii) proviso (a) to s. 57 of the Stamp Act 1949 was amended by virtue of s. 40 of the Finance Act 2021 to substitute the period of 12 months with 24 months and by virtue of s. 36 of the Finance Act 2021, the amendment was to take effect from 1 January 2022.

Commencement Date Of A Statute – Should It Be Prospective Or
F **Retrospective?**

[37] It is the argument of the applicant's solicitor that the amendment should be given retrospective effect. To determine whether a commencement date of a statute should be prospective or retrospective, I refer to the case cited by the applicant's solicitor, whereby the principles are explained by the
G Court of Appeal in *Bauer (Malaysia) Sdn Bhd v. Jack-In Pile (M) Sdn Bhd & Another Appeal* [2018] 10 CLJ 293 ("*Bauer*'s case") as follows:

> [26] Another tool of interpretation of statute is this. Unless there are clear words in the legislation to the contrary, any legislation affecting substantive rights must be given prospective effect. Similarly, if the
H legislation is procedural in nature, that legislation must be given a retrospective effect unless clear words in the same show to the contrary …
>
> [27] The principle distilled from the aforesaid principles of law is that if the legislation does not take away any substantive rights of the citizens
I of the State, then that legislation would be only "procedural" in nature and can be interpreted as a retrospective legislation unless there are clear words to the contrary …

[38] The Federal Court in *Ireka Engineering & Construction Sdn Bhd v. PWC Corporation Sdn Bhd & Other Appeals* [2020] 1 CLJ 193 states as follows: A

> [73] … We entirely agree with the judgment of the Court of Appeal in *Bauer Sdn Bhd* from which we can clearly discern and accept the conclusion that:
>
> (a) ...
>
> (b) Unless there are clear words in the legislation to the contrary, **any legislation affecting substantive rights must be given prospective effect.** If the legislation is **procedural in nature** that legislation must be given **retrospective effect** unless there are clear words to the contrary. (emphasis added)

B C

[39] It is submitted by the applicant's solicitor that the amendment pursuant to s. 40 of the Finance Act 2021, being a mere extension of time for an applicant to file his/her application for a refund or allowance of spoiled stamps, is one of which is procedural in nature.

D

[40] The solicitor for the respondent argued that the Stamp Act is a taxing Act. In principle, the guidelines in interpreting tax statute are as laid down in the Federal Court case of *Palm Oil Research And Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd* [2004] 2 CLJ 265; [2005] 3 MLJ 97, Gopal Sri Ram JCA has laid down the following guidelines: E

> 78 In my judgment s. 17A has no impact upon the well established guidelines applied by courts from time immemorial when interpreting a taxing statute. Section 17A and these guidelines co-exist harmoniously for they operate in entirely different spheres when aiding a court in the exercise of its interpretive jurisdiction. The correct approach to be adopted by a court when interpreting a taxing statute is that set out in the advice of the Privy Council delivered by Lord Donovan in *Mangin v. Inland Revenue Commissioner* [1971] AC 739. First, the words are to be given their ordinary meaning. They are not to be given some other meaning simply because their object is to frustrate legitimate tax avoidance devices. As Turner J said in his (*albeit* dissenting) judgment in *Marx v. Inland Revenue Commissioner* [1970] NZLR 182 at 208, moral precepts are not applicable to the interpretation of revenue statutes.
>
> *Secondly, '… one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption so to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used'.* (Per Rowlatt J in *Cape Brandy Syndicate v. Inland Revenue Commissioners* [1921] 1 KB 64 at 71, approved by Viscount Simons LC in *Canadian Eagle Oil Co Ltd v. Regeim* [1945] 2 All ER 499; [1946] AC 119).
>
> In my respectful view, s 17A of the Interpretation Acts 1948 and 1967 neatly fits into and is complementary with the third principle in the judgment of Lord Donovan. Hence, the governing principle is this. *When*

F G H I

> *construing a taxing or other statute, the sole function of the court is to discover the true intention of Parliament.* In that process, the court is under a duty to adopt an approach that produces neither injustice nor absurdity: in other words, an approach that promotes the purpose or object underlying the particular statute *albeit* that such purpose or object is not expressly set out therein. Imposing a tax by means of subsidiary legislation on a person not identified in the parent Act produces an absurd and unjust result and therefore does not promote its purpose or object. (emphasis added)

[41] I have considered the arguments by the applicant's counsel that the Stamp Act is a law procedural in nature and could be given a retrospective effect by relying on *Bauer*'s case and *Ireka Engineering & Construction Sdn Bhd* (*supra*).

[42] However, I agree with the respondent's counsel that Stamp Act is a taxing Act. And as decided in the case of *Palm Oil Research And Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd* (*supra*), "the correct approach to be adopted by a court when interpreting a taxing statute is that set out in the advice of the Privy Council delivered by Lord Donovan in *Mangin v. Inland Revenue Commissioner* [1971] AC 739. First, the words are to be given their ordinary meaning. They are not to be given some other meaning simply because their object is to frustrate legitimate tax avoidance devices. … When construing a taxing or other statute, the sole function of the court is to discover the true intention of Parliament …".

Interpretation Of Commencement Date

[43] In *Tan Kim Keow v. Pemungut Duti Setem Malaysia* [2020] CLJU 93; [2020] 1 LNS 93; [2020] MLJU 103, Mariana Yahya J (as Her Ladyship than was) has also made the observation as follows:

> [24] The Applicant in his affidavit in reply argued that the 12 months period for the refund application should only begin from the date the stamp duty become spoiled namely the date of the consent judgment in which the Agreements were revoked. As the consent judgment was obtained on 24.10.2018, the Applicant's refund application is therefore within time. However, the Respondent contended that the Applicant's contention is wrong since the time frame of "12 months after the stamp has been spoiled" in proviso (a) of Section 57 of the Stamp Act 1949 which was relied by the Applicant is only applicable to circumstances where there are no 'executed instrument' involved. Such circumstances are expressly provided under Section 57(a) to (e) of the Stamp Act 1949.
>
> [25] Where there is an 'executed instrument' involved, the relevant provision that provides for circumstances where refund of stamp duty may be applicable is Section 57(f) of the Stamp Act 1949. It is pertinent to note that the Applicant's refund application itself had been made under Section 57(f)(i) and/or (iv) and/or (v) of the Stamp Act 1949 as stated in the Applicant's letter dated 13.2.2019.

[26] It is clear that each and every paragraphs under Section 57(f) of the Stamp Act 1949 starting from paragraphs (i) to (vi) with cases involving "an instrument executed by any party …" As such, the Applicant is required to refer specifically to cases involving 'executed instrument' in proviso (a) of Section 57 of the Stamp Act 1949 in determining the time frame which would be applicable to his case.

[27] Neither this court nor the Applicant should disregarded the time frame provided for 'an executed instrument' under proviso (a) of Section 57 of the Stamp Act 1949. As a general rule a court will adopt that construction of a statute which will give some effect to all the words which it contains. It is trite that when the provisions of law are clear and does not admit of any ambiguity, then the provisions must be strictly interpreted. The court refers to the case of *Positive Vision Labuan Ltd v. Ketua Pengarah Hasil Dalam Negeri and Other Appeals* [2017] 2 MLJ 421, FC which held that:

> [44] The wordings of s 3B of the ITA and ss 3A and 2(3) of the LABATA as well as the Exemption Order are clear and unambiguous. It is trite that when the provisions of law are clear and does not admit of any ambiguity, then the provisions must be strictly interpreted. This court in the case of *Krishnadas a/l Achutan Nair & Ors v Maniyam a/l Samykano* [1997] 1 MLJ 94 had held:
>
> > *The function of a court when construing an Act of Parliament is to interpret the statute in order to ascertain legislative intent primarily by reference to the words appearing in the particular enactment. Prima facie*, every word appearing in an Act must bear some meaning. For Parliament does not legislate in vain by the use of meaningless words and phrases. A judicial interpreter is therefore not entitled to disregard words used in a statute or subsidiary legislation or to treat them as superfluous or insignificant. It must be borne in mind that:
> >
> > > As a general rule a Court will adopt that construction of a statute which will give some effect to all of the words which it contains. Per Gibbs J in *Beckwith v. R* [1976] 12 ALR 333, at p. 337.
> > >
> > > (emphasis added)

Decision

[44] Based on the above findings, the affidavit evidence available, the submissions of the parties and the authorities cited, I am of the considered view that the applicant's application for judicial review is without merit and is dismissed with costs subject to allocatur.

Reasons For The Decision

[45] The respondent in deciding to reject the applicant's application for the refund of the stamp duty was duly made in accordance to the relevant statutory provisions of the Stamp Act 1949.

[46] It was clearly stated in proviso (a) of s. 57 prior to the amendment in 2021 that the time limit was specifically stated as 12 months before it was later amended to 24 months.

[47] The applicant rightly concedes that at the time of filing his application, the applicant was already out of time in view of the provision of proviso (a) of s. 57 of the Stamp Act 1949 before the amendment.

[48] Based on the grounds stated by the respondent in their letter to the applicant, the decision to reject the application was stated clearly as follows, I quote:

> 2. Dukacita dimaklumkan permohonan tuan tidak diluluskan kerana:
>
> Dokumen dan alasan yang dikemukakan tidak memenuhi syarat-syarat atau tidak termasuk dalam mana-mana hal keadaan sebagaimana yang ditetapkan dibawah Seksyen 21(7), 57, 58 dan 80(3) Akta Setem 1949.

Whether The Above Decision Was Illegal, Irrational Or Procedural Impropriety

[49] As elucidated above, the exercise of the supervisory jurisdiction in a judicial review means that the focus of the enquiry is the process by which a decision had been made and not the decision in itself.

[50] The decision-making process of the respondent in this case, to my mind, was a simple one. Nothing complex or complicated. It was purely based on the application filed by the applicant, supported by the statutory declaration and relevant documentation. Based on the application and materials before him, the respondent then made a decision which was reflected clearly in their letter to the applicant. The above reason was clearly based on the statutory requirements under the Stamp Act 1949 that the applicant was said to have failed to fulfil accordingly.

[51] A judicial review is a court proceeding where a challenge is made on the decision of the relevant authority or entity by challenging the lawfulness of the decision-making process. This is trite law. Generally, the court dealing with the judicial review application in a supervisory capacity is not to delve into the merit of the case.

[52] This court needs to only determine whether there was any illegality, irrationality and procedural impropriety in the decision-making process by the respondent that warrants this court to interfere with the said decision-making process.

[53] I am of the view that at the time when the respondent decides to reject the applicant's application, they have considered the application in accordance to the powers and authorities conferred on the respondent under the Stamp Act 1949.

[54] Based on their letter to the applicant, the respondent has informed the applicant clearly that their decision was on the basis of non-fulfilment of the conditions as prescribed in ss. 21(7), 57, 58 dan 80(3) of the Stamp Act 1949.

> Dokumen dan alasan yang dikemukakan tidak memenuhi syarat-syarat atau tidak termasuk dalam mana-mana hal keadaan sebagaimana yang ditetapkan dibawah **Seksyen 21(7), 57, 58 dan 80(3)** Akta Setem 1949. (emphasis added)

[55] The relevant provisions of the Stamp Act 1949 that were referred to by the respondent are produced as follows:

> **Section 21. Certain contracts to be chargeable as conveyances on sale.**
>
> (1) …
>
> (2) …
>
> (3) …
>
> (4) (Deleted by Act A723).
>
> (5) (Deleted by Act A723).
>
> (6) (Deleted by Act A723).
>
> *(7) The ad valorem duty paid upon any such contract or agreement shall be returned by the Collector in case the contract or agreement be afterwards rescinded or annulled, or for any other reason be not substantially performed or carried into effect, so as to operate as or be followed by a conveyance or transfer.*
>
> **Section 57. Allowance for spoiled stamps.**
>
> Subject to any rules which may be made under this Act and to the production of such evidence by statutory declaration or otherwise as the Collector may require, allowance shall be made by the Collector for stamps spoiled in the following cases:
>
> (a) …
>
> (b) …
>
> (c) …
>
> (d) …
>
> (e) …
>
> (f) the stamp used for any of the following instruments:
>
> (i) an instrument executed by any party thereto, but afterwards found to be absolutely void from the beginning;
>
> (ii) …;
>
> (iii) …;
>
> (iv) …;

A (v) …;

(vi) …;

Provided as follows:

(a) that the application for relief is made within twelve months after the stamp has been spoiled or become useless or in the case of an executed instrument after the date of the *instrument,* or, if it is not dated, within twenty-four months after the execution thereof by the person whom it was first or alone executed or within such further time as the Collector may prescribe in the case of any instrument sent abroad for execution or when from unavoidable circumstances any instrument for which another has been substituted cannot be produced within the said period;

(aa) … ; or

(b) …

Section 58. Allowance for misused stamps.

When any person has inadvertently used for an instrument liable to duty a stamp of greater value than was necessary, or has inadvertently used a stamp for an instrument not liable to any duty, the Collector may, on application made within twenty-four months after the date of the instrument, or, if it is not dated, within twelve months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if liable to duty, being stamped with the proper duty cancel and allow as spoiled the stamp so misused.

Section 80. Power to exempt, reduce or remit duties.

(1) The Minister of Finance may by order published in the Gazette exempt from duty, which would otherwise be chargeable under this Act, any class of any of the instruments belonging to that class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of that class.

(1A) The Minister of Finance may in any particular case:

(i) exempt from duty any instrument, or all instruments in relation to any scheme which would otherwise be chargeable under this Act; or

(ii) reduce or remit the duties with which any instrument or all instruments in relation to any scheme, are chargeable under this Act.

(2) …

(3) Any order made under subsection (1) or (2) or any exemption, reduction or remission made under subsection (1A) may be made to operate retrospectively to any date, whether before or after the commencement of this Act, and may relate to duties chargeable under any written law repealed by this Act as well as to duties chargeable under this

Act, and, in the case of any such exemption, remission or reduction, any moneys paid in respect thereof shall be refunded. (emphasis added)

[56] It was held by the High Court of Singapore in the case of *Mohan Singh v. Attorney General* [1987] 1 SLR 398, that:

The scope of judicial review does not extend to this Court purporting to act in an appellate capacity and assessing the sufficiency evidence before the Minister of Home Affairs. He had acted within his jurisdiction and it is plainly not for this court to substitute its view on what should be the effect of the evidence before him …

[57] Based on the facts before this court, there was no evidence adduced by the applicant that shows the decision-making process undertaken by the respondent in concluding that the applicant is not entitled to any refund of stamp duty was either 'illegal', 'irrational', or 'procedurally improper'.

[58] In exercising its supervisory jurisdiction, the court is required to confine its enquiry as to whether any errors of law had been committed, disproportionate measures imposed or whether there were many flaws in procedure in the impugned process.

Whether The Respondent Is Wrong In Law In Their Decision-making Process By Not Taking Into Account The Extended Period Of Proviso (a) Of Section 57 As Amended By Section 40 Of The Finance Act 2021

[59] I shall refer to the case of *Ketua Pengarah Hasil Dalam Negeri v. Alcatel-Lucent Malaysia Sdn Bhd & Anor* [2017] 2 CLJ 1; [2017] 1 MLJ 563, Suriyadi FCJ held:

[69] A Judicial review is a court proceeding where a challenge is made on the decision of the relevant authority or entity ('the appellant') *ie*, by challenging the lawfulness of the decision making process. This is trite law. Generally, the Court dealing with the judicial review application in a supervisory capacity is not to delve into the merit of the case. In other words the evidence is not reassessed. The Court is merely to quash the decision of the relevant authority, if need be, and not to substitute with what it thinks is the correct decision. We are not here to usurp the powers of the designated authority.

[70] Lord Brightman in *Chief Constable of North Wales Police v. Evans* (1982) 1 WLR 1155 at page 1174 had occasion to state that a judicial review "*is not an appeal from the decision but a review of the manner in which a decision is made.*" The Book authored by Mr Michael Supperstone QC and Mr James Goudie QC in *Judicial Review* at p 72, was also referred and reads:

It is easy to understand why this is so. The paradigm case of Judicial Review challenge arises where a body whose functions are conferred by statute are said to have acted in a manner in which the law does not allow. But if the only complaint is that the body has reached a decision unfavourable to the Applicant on the facts, and the claim is put forward is a plea to the Court in effect to substitute a different decision, the proceedings would amount to an invitation to the Court to exercise the very function which statute had

> *confided to the body reviewed; to accede to such an invitation would be to usurp the will of Parliament.* Since of course, the Parliament includes the elected element of the legislature, any such stance by the Court might reasonably be castigated as undemocratic ...
>
> (emphasis added)

[60] Another decision in the Court of Appeal case of *Ta Wu Realty Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri & Anor* [2008] 6 CLJ 235; [2009] 1 MLJ 555, where Suriyadi Halim Omar JCA delivering the judgment of the court held that:

> [25] This course of action was taken up, as somehow the Appellant had been distracted, eventually to be deviated by the guidelines of *Jagdis Singh*, resulting in the unwittingly failure to discuss this ground. *It must be understood that a court listening to a certiorari application sits in a supervisory jurisdiction, and merely to scrutinise the manner the assessment was arrived at by the Director General. Put another way, the Court is only concerned with the legality of the decision making process and not eventual decision ie, that 1998 assessment, in relation to the current case.* To state that the impugned Form J is invalid, and that it contains an error of law on the face of that Form J, is a question pertaining to the merits of the assessment, a matter better reserved for the Special Commissioners or a matter to be transmitted as a case stated to the High Court. (emphasis added)

[61] In *Tan Kim Keow v. Pemungut Duti Setem Malaysia* (*supra*), Mariana Yahya J (as Her Ladyship then was) has also made the same observation as follows:

> [24] The Applicant in his affidavit in reply argued that the 12 months period for the refund application should only begin from the date the stamp duty become spoiled namely the date of the consent judgment in which the Agreements were revoked. As the consent judgment was obtained on 24.10.2018, the Applicant's refund application is therefore within time. However, the Respondent contended that the Applicant's contention is wrong since the time frame of "12 months after the stamp has been spoiled" in proviso (a) of Section 57 of the Stamp Act 1949 which was relied by the Applicant is only applicable to circumstances where there are no 'executed instrument' involved. Such circumstances are expressly provided under Section 57 (a) to (e) of the Stamp Act 1949.
>
> [25] Where there is an 'executed instrument' involved, the relevant provision that provides for circumstances where refund of stamp duty may be applicable is Section 57(f) of the Stamp Act 1949. It is pertinent to note that the Applicant's refund application itself had been made under Section 57(f)(i) and/or (iv) and/or (v) of the Stamp Act 1949 as stated in the Applicant's letter dated 13.2.2019.
>
> [26] It is clear that each and every paragraphs under Section 57(f) of the Stamp Act 1949 starting from paragraphs (i) to (vi) with cases involving "an instrument executed by any party ..." As such, the Applicant is required to refer specifically to cases involving 'executed instrument' in

proviso (a) of Section 57 of the Stamp Act 1949 in determining the time frame which would be applicable to his case.

[27] Neither this court nor the Applicant should disregarded the time frame provided for 'an executed instrument' under proviso (a) of Section 57 of the Stamp Act 1949. As a general rule a court will adopt that construction of a statute which will give some effect to all the words which it contains. It is trite that when the provisions of law are clear and does not admit of any ambiguity, then the provisions must be strictly interpreted. The court refers to the case of *Positive Vision Labuan Ltd v. Ketua Pengarah Hasil Dalam Negeri and Other Appeals* [2017] 2 MLJ 421, FC which held that:

> [44] The wordings of s. 3B of the ITA and ss. 3A and 2(3) of the LABATA as well as the Exemption Order are clear and unambiguous. It is trite that when the provisions of law are clear and does not admit of any ambiguity, then the provisions must be strictly interpreted. This court in the case of *Krishnadas a/l Achutan Nair & Ors v. Maniyam a/l Samykano* [1997] 1 MLJ 94 had held:
>
> > The function of a court when construing an Act of Parliament is to interpret the statute in order to ascertain legislative intent primarily by reference to the words appearing in the particular enactment. *Prima facie*, every word appearing in an Act must bear some meaning. For Parliament does not legislate in vain by the use of meaningless words and phrases. A judicial interpreter is therefore not entitled to disregard words used in a statute or subsidiary legislation or to treat them as superfluous or insignificant. It must be borne in mind that:
>
> As a general rule a Court will adopt that construction of a statute which will give some effect to all of the words which it contains. Per Gibbs J in *Beckwith v. R* [1976] 12 ALR 333, at p. 337.

Whether The Respondent Is Under The Obligation To Give Retrospective Effect To The Application Where It Was Already Time-Barred

[62] It was not expressly stated in the Finance Act 2021 or the Stamp Act 1949 that the amendment to proviso (a) to s. 57 of the Stamp Act 1949 shall commence retrospectively. Section 36 of the Finance Act 2021 which was gazetted on 31 December 2021, clearly prescribed the date of commencement is on 1 January 2022 and this proves that the commencement of the Act is prospective in nature.

[63] Though the applicant's application for refund was filed after the date of coming into force of the amended provision of proviso (a) of s. 57 of the Stamp Act, it does not meet the strict requirement of s. 57 of the Stamp Act 1949 regarding the time frame of 12 months period as the application falls under the former provision of the proviso to s. 57 of the Stamp Act.

Therefore, the respondent had rightly exercised his statutory power under the former provision of proviso (a) to s. 57 as mentioned in the respondent's letter to the applicant.

[64] In my view, the respondent is under no obligation to give retrospective effect to the amended provision of proviso (a) to s. 57 of the Stamp Act 1949 in respect of the applicant's application where the said application was clearly time-barred at that material time and the amendment to proviso (a) to s. 57 was clearly of prospective in nature. The decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

[65] There was nothing mentioned in the Parliament's Hansard that the Parliament have agreed for the date of amendment to the Finance Act 2021, in particular proviso (a) to s. 57 of the Stamp Act 1949 to be made retrospectively. There is no saving clause or transitional clause in the amending statute (Finance Act 2021) that could be relied on by the applicant in respect of his statute-barred claim for refund of the stamp duty.

[66] Whether a statute is to be construed in a retrospective sense, and if so to what extent, depends on the intention of the Legislature as expressed in the wording of the statute, having regard to the normal canons of construction and to the relevant provisions of any interpretation statute (see *Yew Bon Tew & Anor v. Kenderaan Bas MARA* [1983] 1 CLJ 11; [1983] CLJ (Rep) 56). In the absence of the said provision, therefore, it is the intention of Parliament that the amendments are to be prospective in nature as evident in s. 36 of the Finance Act 2021.

Conclusion

[67] Based on the aforesaid reasons, I am of the considered view that the application for judicial review by the applicant herein is without merit and I have dismissed the same with costs.